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17 UNITED STATES DISTRICT COURT  
18 EASTERN DISTRICT OF CALIFORNIA  
19 ROBERT T. MATSUI FEDERAL COURTHOUSE

20 CALIFORNIA SPORTFISHING  
21 PROTECTION ALLIANCE,  
22 Plaintiff,

23 v.

24 JEFFERY MACOMBER, in his official  
25 capacity as Secretary of the California  
Department of Corrections and  
Rehabilitation,

26 Defendants.

27 COUNTY OF AMADOR, a public  
28 agency of the State of California,

Plaintiff,

v.

29 KATHLEEN ALLISON in her official  
30 capacity as Secretary of the California  
31 Department of Corrections and  
32 Rehabilitation; PATRICK COVELLO in  
33 his official capacity of Warden of  
34 California Department of Corrections  
35 and Rehabilitation Mule Creek State  
36 Prison; and CALIFORNIA  
37 DEPARTMENT OF CORRECTIONS  
38 AND REHABILITATION,

Defendants.

Case No. 2:20-cv-02482-WBS-AC  
[Consolidated with 2:21-cv-00038-  
WBS-AC]

**PLAINTIFFS COUNTY OF  
AMADOR AND CALIFORNIA  
SPORTFISHING PROTECTION  
ALLIANCE'S OPPOSITION TO  
EX PARTE APPLICATION**

[Filed concurrently with:

1. Declaration of Christopher M.  
Pisano in Support of Opposition  
to Ex Parte Application; and
2. Declaration of Erica Maharg in  
Support of Opposition to Ex Parte  
Application.]

Date: None set  
Time: None set  
Dept: 5  
Judge: William B. Shubb

Trial Date: April 18, 2023  
Action Filed: January 7, 2021

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1 Plaintiffs County of Amador (“County”) and California Sportfishing  
2 Protection Alliance (“CSPA”) jointly submit this opposition to Defendants Jeffery  
3 Macomber, in his official capacity as Secretary of the California Department of  
4 Corrections and Rehabilitation (“CDCR”) Patrick Covello, in his official capacity  
5 as Warden of CDCR’s Mule Creek State Prison and CDCR (collectively  
6 “Defendants”) *ex parte* application to modify the Final Pretrial Order (ECF 110),  
7 and continue the April 18, 2023 trial date and all related deadlines except for the  
8 April 13, 2023 Final Settlement Conference by no less than seven weeks in the  
9 above captioned case.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION**

12 Defendants’ *ex parte* application to modify the Final Pretrial Order (ECF  
13 110), and continue the April 18, 2023 trial date and all related deadlines except for  
14 the April 13, 2023 Final Settlement Conference by no less than seven weeks does  
15 not adequately consider prejudice and inconvenience to the Court and Plaintiffs.  
16 Additionally, Defendants fail to explain how known pretrial filings could come as a  
17 surprise when the Final Pretrial Order was delayed. This also contradicts  
18 Defendants’ failure to indicate the need for any trial continuance to adequately  
19 prepare for trial at the pretrial conference on February 13, 2023.

20 **II. DEFENDANTS HAVE FAILED TO MEET THE REQUIREMENTS**  
21 **FOR EX PARTE RELIEF**

22 Defendants’ *ex parte* application fails to establish that Defendants warrant *ex*  
23 *parte* relief in this instance. When considering a request to continue deadlines  
24 under Fed. R. Civ. P. 6(b)(1) and Fed. R. Civ. P. 16(e), the Court considers four  
25 factors: “(1) the ‘diligence’ of the party seeking the continuance; (2) whether  
26 granting the continuance would serve any useful purpose; (3) the extent to which  
27 granting the continuance would have inconvenienced the court and the opposing

1 party; and (4) the potential prejudice.” *State Farm Fire & Cas. Co. v. Willison*, 833  
2 F.Supp.2d 1200, 1211 (D. Haw. 2011) (citing *United States v. Flynt*, 756 F.2d  
3 1352, 1358 (9th Cir. 1985) amended by 764 F.2d 675 (9th Cir. 1985)). Because  
4 Defendants failed to consider all four factors, *ex parte* relief should not be granted.

5 **A. If Defendants Were Diligently Preparing for Trial, the Trial**  
6 **Continuance Would Not Be Necessary**

7 Although Defendants’ *ex parte* application claims that Defendants were  
8 diligent, the circumstances surrounding this *ex parte* application indicate that  
9 Defendants were not diligently pursuing trial preparation. At the pretrial  
10 conference on February 13, 2023, Defendants did not indicate any need for a trial  
11 continuance to adequately prepare for trial scheduled to begin on April 18, 2023.  
12 Declaration of Christopher Pisano (“Pisano Decl.”) ¶2. At this time, the filing  
13 requirements prior to trial were equally available to both parties through the Court’s  
14 Standing Order, applicable Local Rules and Federal Rules of Civil Procedure. Hon.  
15 Shubb, Standing Order, notice 2 and § IV; Local Rules 250.2(c), 281(b)(12),  
16 282(5), (7), 290; Fed. Rules Civ. Proc., Rules 52.

17 Now, Defendants have asserted that they were unaware of the pretrial filing  
18 requirements. ECF 111, 6:21 – 7:7. By claiming that Defendants were unaware of  
19 these pretrial requirements, Defendants implicate that they were not diligent as they  
20 were unaware of the pretrial requirements described in resources available to all  
21 parties. This also contradicts Defendants’ February 13, 2023 indication that no trial  
22 continuances were needed to adequately prepare for trial.

23 In addition, Defendants have not been diligent in attempting to resolve the  
24 issues related to this Final Pretrial Order. On March 29, 2023, the day that the  
25 Final Pretrial Order was received, Plaintiffs coordinated to come up with an  
26 agreeable solution and reached out to Defendants proposing a condensed timeline  
27 for the Pretrial Order. Pisano Decl. ¶¶ 5-7. Defendants did not respond to this  
28

1 proposal until 6:11 pm on Friday, March 31, 2023, indicating that they would not  
2 agree to simply modifying the timeline and would, instead, request a continuance.  
3 Pisano Decl. ¶ 8.

4 **B. Delaying the Trial for Settlement Discussions Is Unwarranted**

5 To the extent Defendants seek a trial continuance to allow for settlement  
6 discussions, this should not be granted because Defendants have not diligently  
7 engaged in settlement discussions with Plaintiffs. Plaintiffs have repeatedly sought  
8 to engage Defendants in meaningful discussions throughout this litigation. See  
9 Maharg Decl., ¶¶ 2-3. Despite this, Defendants have stated they could not attend a  
10 settlement conference until the eve of trial and failed to respond until recently.  
11 Maharg Decl., ¶¶ 3-4. While Plaintiffs intend to engage meaningfully in settlement  
12 discussions over the next couple weeks, delaying the trial in order to do so is  
13 unwarranted because the lack of time to hold settlement discussions is a result of  
14 Defendants' failure to respond.

15 **C. Defendants Failed to Consider How The Trial Continuance Would**  
16 **Prejudice Plaintiffs and Inconvenience the Court**

17 Defendants also did not consider the impact of the trial continuance on either  
18 the Court or Plaintiffs. Moving the trial needlessly disrupts the Court's calendar  
19 especially considering that Plaintiffs have proposed modifications to the Pretrial  
20 Order that would not impact the Court's trial calendar or prejudice Defendants and  
21 Defendants' counsel already indicated that they would be ready for trial.

22 Additionally, Plaintiffs would be prejudiced by the proposed trial  
23 continuance. First, Plaintiffs have already begun preparing expert witnesses and  
24 moving the trial would require Plaintiffs to incur unnecessary costs re-preparing the  
25 same witnesses. Pisano Decl. ¶ 9. Second, trial counsel for the County is  
26 unavailable from May 15<sup>th</sup> through the end of September and would not be able to  
27 move trial as suggested by Defendants. Pisano Decl. ¶ 10; see also Declaration of  
28

1 Erica Maharg (“Maharg Decl.”) ¶ 5 (CSPA’s counsel testifying to additional  
2 conflicts). Third, the purpose of this lawsuit is to prevent continued violations of  
3 the Clean Water Act and delaying the trial allows continued violations and harm to  
4 County residents. Fourth, it is unreasonable to move the trial six months for a party  
5 who indicated that no trial continuance was necessary.

6 **III. CONCLUSION**

7 For the foregoing reasons, Plaintiffs respectfully requests the Court to deny  
8 Defendant’s *ex parte* application.

9  
10 Dated: April 4, 2023

BEST BEST & KRIEGER LLP

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12 By: /s/ Anya Kwan

CHRISTOPHER M. PISANO  
SHAWN D. HAGERTY  
REBECCA ANDREWS  
ANYA KWAN  
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COUNTY OF AMADOR

16  
17 Dated: April 4, 2023

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18  
19 By: /s/ Erica A. Maharg

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